INDEX

CITATIONS

In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 563

MIRIAM G. HOSTETTER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the District Court of the United States for the Western District of Pennsylvania (R. 186–195) is reported at 28 F. Supp. 227. The opinion of the Circuit Court of Appeals for the Third Circuit (R. 199–203) is reported at 113 F. (2d) 64.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on June 27, 1940 (R. 203). A petition for rehearing was denied by the Circuit Court of Appeals on August 9, 1940 (R. 204). The petition

for a writ of certiorari was filed on November 9, 1940. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the taxpayer is entitled to deduct from her gross income for 1926, the amount of $92,451.56 alleged to have been paid during the year to the State of California as inheritance taxes upon the estate of her deceased husband.

STATUTES INVOLVED

The pertinent provisions of the statutes involved are printed in the Appendix, *infra,* pp. 10–13.

STATEMENT

This suit was brought against the United States to recover an alleged overpayment of federal income tax for the year 1926 in the amount of $22,912.54 (R. 2–6). The cause was submitted to the trial court upon the allegations and admissions in the pleadings (R. 2–10, 14–18), the oral testimony of one witness (R. 34–76), and certain documentary evidence (R. 78–179), from which the court made Findings of Fact and Conclusions of Law (R. 186–192), supplemented by a written opinion (R. 192–195), and entered judgment for the United States (R. 195). The Circuit Court of Appeals affirmed (R. 199–203).

The findings of the District Court may be summarized as follows:

Miriam G. Hostetter, the petitioner, is the widow of D. Herbert Hostetter who died testate, a resident of Pittsburgh, Pennsylvania, on September 28, 1924. In addition to the petitioner, the decedent left surviving him two sons, two daughters, and four grandchildren (R. 186–187).

By the decedent's will the petitioner, one daughter, and the Fidelity Title & Trust Company of Pittsburgh were nominated and promptly qualified as executors (R. 187).

The decedent's estate consisted of real and personal property located in divers states, and included a net estate in California of a fair market value of $3,636,701.58 (R. 87, 89–91, 187–188).

The decedent left specific property to petitioner. The residue was left in trust, the net income to be distributed in monthly installments, one-half to the petitioner for life and after her death to decedent's children or their lineal descendants, and the other half to the decedent's children and their descendants, with specified remainders (R. 78–85, 188–190).

On or about February 10, 1926, the decedent's executors paid $294,752.61 out of the corpus of his estate to the State of California as inheritance tax (R. 190).

On March 14, 1927, the petitioner filed her individual federal income-tax return for the year 1926 and paid the tax of $32,599.77 shown thereon to be due. The return was made upon the cash receipts and disbursements basis (R. 186). On March 12,

1930, she filed a claim for refund of $22,912.54 of the tax paid for 1926. The basis of her claim was that she had paid to the State of California on February 10, 1926, the amount of $92,451.56, which represented the proportionate amount of the total inheritance tax paid to the State of California applicable to her life estate in the property left by the decedent in that State (R. 186, 190).

The District Court found as a fact that the taxpayer did not pay the amount of $92,451.56, or any other amount, to the taxing authorities of California during the taxable year 1926 (R. 190). However, she did give the executors her non-interest-bearing note in that amount, payable in ten annual installments. She in fact paid the note in full in 1927 (R. 190). The executors were allowed to credit all the California inheritance taxes against the Federal estate tax, but neither they nor petitioner claimed the benefit of a deduction with respect to these inheritance taxes or any part thereof, in their income-tax returns for the year 1926 (R. 190).

The District Court further found as a fact that under the decedent's will the petitioner's only interest in the decedent's California estate, aside from compensation as coexecutor and cotrustee, was the right to receive for life one-half of the net income accruing thereon subsequent to September 28, 1924, after payment of "all taxes and necessary expenses" (R. 190).

On the basis of the facts found the District Court concluded as a matter of law that the petitioner was not entitled to a deduction of $92,451.56, or any other sum, from her 1926 income as inheritance taxes *paid by her* during that year, and that the taxes sought to be recovered in this action had been lawfully assessed and collected (R. 191, 192). The Circuit Court of Appeals affirmed (R. 199–203).

ARGUMENT

The decision of the Circuit Court of Appeals is correct and is not in conflict with any decision of this Court or any other Circuit Court of Appeals. No question of general importance is here presented.

This suit was brought to recover federal income taxes paid by the petitioner for the taxable year 1926. The basis of the suit is the petitioner's claim that she is entitled to a deduction from income of that year in the amount of $92,451.56, under Section 703 of the Revenue Act of 1928, *infra,* which applies retroactively to taxable years governed by the Revenue Act of 1926, c. 27, 44 Stat. 9, and prior Revenue Acts.

Section 703 of the 1928 Act purports to allow a deduction, either to the estate of a decedent or to the beneficiaries of the estate, on account of estate, inheritance, legacy, or succession taxes "paid or accrued within such taxable year." Paragraphs (1), (2), and (3) of subsection (a) deal with the allowance where the deduction has been "claimed"

either by the estate or by the beneficiaries, or both; and the term "claimed" is defined in Section 703 (b) to mean claimed either in the income tax return of such estate or beneficiaries or in a claim in abatement filed with respect to an assessment made prior to June 2, 1924. None of the provisions of these paragraphs is applicable to the instant case because the deduction was not "claimed" either by the decedent's estate or by the petitioner within the meaning of the statute. Accordingly, petitioner must look to paragraphs (4) and (5) as authority for claiming the deduction involved in this proceeding.

1. The petitioner has not shown that she is entitled to the deduction in question by reason of the provisions of paragraph (4) of Section 703 (a), Appendix, *infra.* That paragraph provides that if the deduction has not been "claimed" either by the estate or the beneficiary it shall be allowed only to the person (either the estate or the beneficiary) who actually paid the tax.

The petitioner has kept her books of account and made her income tax return upon the basis of cash receipts and disbursements. (R. 186.) Accordingly, any deduction which could be claimed for the taxable year 1926 would be limited to amounts actually paid within the taxable year. See Sections 200 and 212 of the Revenue Act of 1926, Appendix, *infra.* The District Court found from the evidence that the amount claimed as a

deduction in this proceeding was not paid by her within the taxable year (R. 190), and therefore correctly disallowed the deduction. Compare *Helvering* v. *Price,* 309 U. S. 409. The Circuit Court of Appeals held that the District Court's finding in this respect was supported by the evidence. (R. 202.) Petitioner's argument before this Court with respect to her claim under paragraph (4) (Br. 10–19) is devoted to a review of the evidence on this question. However, the matters discussed were fully considered by both courts below, and we submit there was no error in their determinations.

2. Nor has petitioner shown that she is entitled to the deduction claimed by reason of paragraph (5) of Section 703 (a), *infra.* That paragraph provides that notwithstanding the provisions of the first four paragraphs, if a claim for the deduction by the estate is barred by the statute of limitations but a claim for the reduction by the beneficiary is not so barred it shall be allowed to the beneficiary, and, conversely, if a claim for the deduction by the beneficiary is barred by the statute of limitations but a claim for the deduction by the estate is not so barred it shall be allowed to the estate.

In order to bring herself within the provisions of paragraph (5), it was incumbent upon the petitioner to allege and prove that a claim by the estate for this deduction was barred by the statute of limitations. In paragraph "seventh" of her petition she so alleged (R. 4). This allegation was de-

nied by the Government in its answer (R. 7–8). At the trial of the case no evidence whatever was offered to support this allegation, and none can be found in the record. No finding with respect to this alleged fact was found by the trial court (R. 186–190), and no reference made to it in the court's opinion (R. 192–195). In the circumstances the Circuit Court of Appeals properly held that the petitioner had failed to show she was entitled to the deduction by reason of the provisions of paragraph (5) (R. 202–203).

Moreover, the petitioner's argument in support of her claim under paragraph (5) (Br. 20–26) is without merit. It is not shown that a claim by the decedent's estate was barred. She is even in error in assuming (Br. 21) that the matter is governed by limitation provisions of the 1934 and subsequent Revenue Acts. The taxable year involved is 1926, and under Section 284 (b) of that Act, c. 27, 44 Stat. 9, three years from the date the tax was paid are allowed within which to file a claim for refund. Certain exceptions to this requirement were provided in cases where a deficiency was determined by the Commissioner and a petition filed with the Board of Tax Appeals. See Section 284 (d) and (e) of the 1926 Act.

The record does not show when the income tax was finally determined or paid by the decedent's estate for 1926, or whether a deficiency was ever determined against the estate for that year. With-

out this information it is impossible to say that a claim by the estate was barred either at the time the petitioner filed her claim or at the time she instituted her suit.

CONCLUSION

There is no conflict of decisions. The decision below is fully supported by the facts and the law. The petition should be denied.

Respectfully submitted.

Francis Biddle,
Solicitor General.
Samuel O. Clark, Jr.
Assistant Attorney General.
Sewall Key,
Arnold Raum,
F. E. Youngman,
Special Assistants to the Attorney General.

January 1941.